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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SHANNON MORASCH-DANIEL,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

Case No. C07-5077 FDB

ORDER AWARDING 42 U.S.C. §
406(b) ATTORNEY FEES

This matter comes before the Court on Plaintiff's motion for authorization of attorney fees under 42 U.S.C. § 406(b). Counsel for Plaintiff seeks a fee award of \$15,422.50. The Commissioner has filed a response to Plaintiff's motion indicating Defendant has no objection to the fee request.

Attorney's fees may be awarded to a successful social security claimant's lawyer for his or her representation before a court pursuant 42 U.S.C. §§ 406(b); Straw v. Bowen, 866 F.2d 1167 (9th Cir. 1989). Plaintiff must apply to the Social Security Administration for an award of fees for representation at the administrative level. 42 U.S.C. § 406(a); Stenswick v. Bowen, 815 F.2d 519 (9th Cir. 1987). Previously, this Court awarded Plaintiff's counsel \$3,612.60 pursuant to the Equal

1 Access to Justice Act (EAJA). Plaintiff's counsel now petitions for a gross fee of \$15,422.50.

2 Under 42 U.S.C. § 406(b)(1)(A) the court can only award fees up to the 25 percent withheld
3 from the past-due benefits. This 25 percent limit applies to the total of EAJA and 406(b) fees
4 combined. See, Morris v. Social Sec. Admin., 689 F.2d 495, 497-98 (4th Cir. 1982); Webb v.
5 Richardson, 472 F.2d 529, 536 (6th Cir. 1972); Dawson v. Finch, 425 F.2d 1192, 1195 (5th Cir.
6 1970).

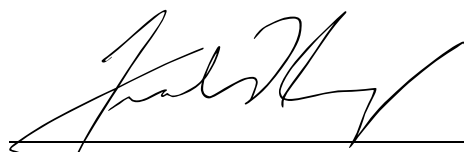
7 Plaintiff was awarded \$82,890.00 in past due benefits. The requested fee is less than
8 25percent of past due benefits. The Court concludes that the attorney's fees sought counsel are
9 reasonable within the meaning of § 406(b). Plaintiff's counsel is entitled to a gross attorney fee of
10 \$15,422.50. Subtracting the \$3,612.60 previously awarded EAJA fees, counsel is entitled to a net
11 award of \$11,809.90.

12 ACCORDINGLY,

13 IT IS ORDERED:

14 Plaintiff's Motion for an Award of Attorney's Fees [Dkt #26] is **GRANTED**. Plaintiff's
15 counsel is awarded 42 U.S.C. § 406(b) gross attorney fees in the sum of \$15,422.50. The
16 Commissioner is directed to subtract the \$3,612.60 previously awarded EAJA fees and send to
17 Plaintiff's counsel an award of \$11,809.90., minus any applicable processing fees as allowed by
18 statute. Any amount remaining of past due benefits withheld by the Commissioner shall then be
19 released to Plaintiff.

20 DATED this 10th day of October, 2008.

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23 FRANKLIN D. BURGESS
24 UNITED STATES DISTRICT JUDGE
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